NO. 46913-8-II

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

JAMES SYLVESTER MAHONE,

Appellant.

APPELLANT'S BRIEF

James L. Reese, III
WSBA #7806
Attorney for Appellant

612 Sidney Avenue
Port Orchard, WA 98366
(360)876-1028

Pm 6/2/15

TABLE OF CONTENTS

E. APPENDIX

TABLE OF AUTHORITIES

TABLE OF CASES

STATUTES

REGULATIONS AND RULES

A. Assignments of Error

Assignments of Error

1. The trial court erred when it denied the defendant's motion seeking credit for community placement while he was at liberty and during the time that an order finding his term of community placement had expired was appealed by Department of Corrections.

2. The trial court erred when it denied the defendant's motion for reconsideration of the above stated issue.

Issues Pertaining to Assignments of Error

1. Whether the trial court erred when it denied the defendant's motion seeking credit toward his community placement term while the case was appealed by Department of Corrections (DOC) and while he was at liberty, without supervision, based on a mistaken trial court ruling that his community placement term had expired? (Assignment of Error No. 1.)

2. Whether the trial court abused its discretion when it denied the defendant's motion for reconsideration? (Assignment of Error No. 2.)

B. Statement of the Case

On September 22, 1995 Sylvester James Mahone plead guilty to Murder in the Second Degree in violation of RCW 9A.32.050(1)(a) in the Superior Court of Washington for Pierce County. CP 71. He was

sentenced on October 24, 1995 to 178 months commitment. CP 76. At that time Community Placement was not ordered. *id.* Over ten years later, on November 18, 2005, an order was entered that "corrected" the Judgment and Sentence. CP 81. This Order Nunc Pro Tunc directed that Community Placement should be imposed for two years. CP 82; RCW 9.94A.120(8)(b).

Mahone was released from prison on August 2, 2009. CP 66. He then began serving the community placement sanction of two years. He finished his community custody obligation on December 29, 2009. *id.* Then he began serving the postrelease supervision portion of his 1995 sentence. *id.*

On April 8, 2014 the trial court had ruled that Mr. Mahone's community placement term had expired. CP 1. The defendant had moved to have 248 days of sanction time he had served counted toward his remaining community placement time of 360 days, CP 1. "He argued that his term of community placement was actually a term of community custody and under RCW 9.94A.171(3)(a) , terms of community custody are not be tolled by sanction time." *id.* The trial court then entered an order on April 8, 2013 ruling "Therefore his community placement term on the above cause has expired." *id.*

On March 12, 2014 the Court of Appeals granted the Department's

petition and reversed the trial court's order of April 8, 2013. The Court of Appeals reversed and held in part that "...the trial court infringed the Department's authority to determine when Mahone's term of community placement has tolled...and that RCW 9.94A.171(3)(a); which overrides the Department's authority to determine tolling as to terms of community custody, does not apply to terms of community placement." CP 2.

On May 1, 2014 this case was set for hearing. It was alleged that Mr. Mahone consumed methamphetamine on or about April 30, 2014. RP 3. Mr. Mahone was placed on a no-bail hold and the matter was continued to the non-compliance hearing calender before Judge Culpepper, who replaced Mahone's retired sentencing judge. RP 4.

May 16, 2014 Hearing

On May 16, 2014 Mr. Mahone argued that he had spent 25 months on community placement and his term had expired. 5/16/14 RP 6. He argued that he was on community placement from August 2, 2009 to October 14, 2010, and from April 20, 2012 to March 24, 2013 for a total of 25 months. *Id.* However, the department estimated that he had 5 or 6 months of supervision remaining. RP 5.

The trial court observed that Mr. Mahone had 112 days of supervision remaining using the Department of Corrections number referred to in the Court of Appeals decision of March 12, 2014. RP 5.

Accordingly, the defendant argued that the 112 days remaining should have been credited from the date of the trial Court order of April 8, 2013. The defense argued: "...he can't be absconding if he's operating on the face of what appears to be valid court order." 5/16/14 RP 11. Contrarily, the department argued that Mr. Mahone had 112 days remaining on community placement from the date he re-contacted the Department of Corrections after the Court of Appeals' ruling of March 12, 2014. That date was determined to be March 18, 2014. RP 13. Based on that argument the trial court calculated the remaining community placement time at 84 days RP 13,15.

During these same proceedings the trial court found a violation of Mr. Mahone's duty to report and found a violation of methamphetamine use. RP 20, 28. Mr. Mahone was accused of not reporting on April 25th. RP 16. The DOC left a message with Mr. Mahone's mother on April 24th advising her that Mr. Mahone needed to report by April 25th. *id.* He reported to DOC on April 30, 2014 when the urine sample was collected.

Mr. Mahone testified: "I never received that because I don't live at home; I'm homeless. I'm not in contact with my mom every day." *id.* Ms. Mahone testified that she received a message that her son was to report on April 30th. RP 18. She testified: "He leaves that number on my number, but I don't see him at times, sometimes all week, so he is out there on the

street, living out there wherever he can, sleeping wherever he can. He tries to make it when he can." *id.*

Mr. Mahone also argued:

> "The other time, the second time. Is not a violation because I was following a second-duty officer's instructions to report on the 30th, and the time that – that same time is when Mr. Haberman had left a message with my mother that I was supposed to report on a Friday. Well, I never received that message because I don't live at home and I don't have a phone and I have no contact with my mom. So I did report as instructed by the duty officer on the 30th. I just didn't receive his phone calls. I don't have a phone. There's no way I can fix that. I don't live at home." RP 22.

Mahone was sentenced to 30 days in jail on each violation concurrently, with credit for time served. RP 28. The court entered an Order Modifying the Judgment and Sentence with credit for 16 days previously served. CP 31-2.

July 25, 2014 Hearing

Subsequently on July 1, 2014 the Department filed a Court-Notice of Violation. CP 55. This time it was alleged that on June 16, 2014 Mr. Mahone reported to the Puyallup Field Office and was not able to provide a urine sample.

Another hearing was conducted on July 25, 2014. On this occasion it was testified to that Mr. Mahone arrived at the Puyallup field office on

June 26, 2014 at 1:37 p.m. A urine sample was ordered, but he was unable to provide one because he could not urinate. 7/25/14 RP 37. Mr. Mahone returned at 2:40 p.m. and was unable to give a sample. *id.* Thereafter, he was unable to provide a sample at 3:30 p.m and was violated. RP 38.

Mr. Mahone testified that he did not provide a sample "Because my body couldn't produce urine to provide a urine sample." RP 47. He further explained that he had ridden his bicycle from Parkland to Puyallup and that he had urinated earlier in the day. *id.* He requested a cup of water but was advised that DOC does not provide water. *id*

The trial court imposed a sanction of 24, with credit for time severed since July 1, 2014. RP 56. According to the trial court and DOC Mr. Mahone had 48 days of community placement remaining as of July 25-26th, 2014. RP 54-5.

October 17, 2014 Hearing

On October 17, 2014 the trial court heard the defendant's written motion to credit his time at liberty against his community supervision time. The previous May calculation of 84 days remaining of supervision was re-affirmed by the trial court. RP 60. The court stated that as of this date Mr. Mahone had approximately 54-55 days remaining of community supervision. 10-17-14 RP 60, 63.

The hearing considered the defendant's motion to credit his time at

liberty against community supervision. RP 61. Essentially, the defendant argued that from the date of the trial court's order of April 8, 2013 until he was formally placed back on community placement and supervised by DOC in March 2014, he should have received credit because he had not voluntarily absconded.[1]

The court denied his motion and ruled that he had "approximately 54 or 55 days of community custody (sic) remaining once he's released on his current charges, plus or minus a day." [2] RP 66, 68.

Thereafter, Mr. Mahone filed a written motion for reconsideration on October 23, 2014. CP 102-03. The motion requested that the trial court reconsider its Order of October 17, 2014 which denied his motion to credit time spent at liberty against the remainder of his supervision. CP 103. The defendant argued that was entitled to equitable relief. CP 105. He stated that he "...did not negatively contribute to his release, had not absconded legal obligations and had no further criminal convictions while at liberty." CP 106.

---

[1] At this hearing Mr. Mahone cited *In re Personal Restraint Petition of Roach,* 150 Wn.2d 29, 31-40, 74 P.3d 134 (2003) and RCW 9.94A.171 in support of his arguments. (See appendix.)

[2] See *State v. Donaghe* , 172 Wn.2d 253, 265, 256 P.3d 1171 (2011) ("..."'[p]ostrelease supervision" is defined as "that portion of an offender's community placement that is not community custody.'"

On December 31, 2014 the trial court entered an order denying defendant's motion for reconsideration. CP 118. Previously, the defendant's attorney had filed a notice of appeal on November 14, 2014 of the order that denied the defendant's pro se motion to credit his time at liberty against his community supervision term. CP 111. The defendant also filed a "pro se" notice of appeal on January 14, 2015. CP 119.

C. Argument

I. THE TRIAL COURT ERRED WHEN IT DENIED THE DEFENDANT'S MOTION TO CREDIT COMMUNITY PLACEMENT TIME WITH THE TIME HE WAS AT LIBERTY PENDING APPEAL BY DOC.

Mr. Mahone has argued that his term of community placement should not toll pending appeal of the trial court's decision that ruled that his term of community placement had expired. CP 94; RP 61-6. During this time he was not on DOC supervision through no fault of his own. The trial court denied his motion. RP 66.

Standard of Review

The standard of review for questions involving statutory interpretation are reviewed *de novo. State v. Eaton,* 168 Wn.2d 476, 480, 729 P.3d 704 (2010)*; Rettkowski v. Department of Ecology,* 128 Wn.2d 508, 515, 910 P.2d 462 (1996).

As a preliminary matter and according to Amicus brief of the

Department of corrections that was filed on July 24, 2014:

> "In 1999, the Washington State Legislature passed the Offender Accountability Act (OAA), which affects how the state provides community supervision to adult offenders. The effective date of the OAA was July 1, 2000. As a result of this act, broad changes were made to chapter 9.94A RCW. Following the passing of the OAA, sentencing provisions for crimes committed prior to July 1, 2000 became codified in Chapter 9.94B RCW. Prior to the OAA, two statutory provisions governed community placement violations. Former RCW 9.94A.205 (currently 9.94A.737) governed *community custody* violations whereas former RCW 9.94A.175 (currently 9.94B.030) and former RCW 9.94A. 200 (currently RCW 9.94B 040) governed *postrelease supervision* violations.[fn]
>
> Mahone's current violation occurred while he was on postrelease supervision. Therefore, former RCW 9.94A.175 is the statutory provision applicable to Mahone's offense. *See* RCW 9.94A.345. The authority to conduct a hearing for violations while on postrelease supervision lies squarely with the trial court:
>
> > If the offender violates any condition of postrelease supervision, a hearing may be conducted in the same manner as provided in RCW 9.94A.200. Jurisdiction *shall be with the court* of the county in which the offender was sentenced.
>
> RCW 9.94A.175 (currently 9.94B.030 (effective date July 1, 1988) (emphasis added)."

CP 67-8 (footnote stated: "Postrelease supervision is no longer a part of the Sentencing Reform Act, chapter 9.94A RCW. It is now part of chapter 9.94B RCW.)) CP 67. (See appendix RCW 9.94B.030.).

Based on numerous factors established in case law there is ample support for Mr. Mahone's legal arguments. To begin with it has been decided that community supervision may not be tolled when there is no wrongdoing by the offender, such as in this case. In support of his argument, the defendant cited *In re Personal Restraint of Roach*, 150 Wn.2d 29, 31-40, 74 P.3d 134 (2003).

In *Roach*, the defendant was erroneously released from custody by DOC in May 1999, after he completed a 13 month sentence but before he completed the remaining 18 months of a 31 month sentence. *id.*. at 31. Ten days later DOC realized their mistake but were unable to locate Roach. In April 2002 he was stopped in Indiana and released. He did not contest a Washington governor's warrant and turned himself in. After his appearance in Thurston County Superior Court, the case ultimately ended up in the State Supreme Court on a personal restraint petition. Roach argued that according to the equitable doctrine of credit for time spent on liberty he was entitled to credit. He also claimed that any subsequent re-incarceration violated due process.

The State Supreme Court granted his petition, reversed the Court of Appeals and ruled that he was entitled to day-for-day credit against his sentence from the time he spent at liberty. The Supreme Court held in part:

> "An erroneously released prisoner will be granted day-for-day credit against his sentence for time spent at liberty, provided that he did not contribute to his erroneous release and, while at liberty, he did not abscond any remaining legal obligations and had no criminal convictions." *id.* at 30.

Consequently, another reason to not toll Mr. Mahone's supervision pending the outcome of the appeal in this case is that he did not commit any new law violations. *Roach* at 37.[3]

Although there was no negligence on the part of government, in the case at bench, Mr. Mahone relied on a Superior court ruling that excused him from reporting to DOC. He had no reason not to suppose that the trial court was correct in its ruling that his community placement time had expired. The trial court's decision was rendered in April 2013, a little less than four years since the date he was released from prison in August 2009. CP 66. According to *White v. Pearlman,* 42 F.2d 788, 789 (10th cir. 1930):

> "A sentence of five years means a continuous sentence, unless interrupted by escape, violation of parole, or some fault of the prisoner, and he cannot be required to serve it in installments."

---

[3] The court held: "We, therefore, hold that a convicted person is entitled to credit against his sentence for time spent erroneously at liberty due to the State's negligence, provided that the convicted person has not contributed to his release, has not absconded legal obligations while at liberty, and has had no further criminal convictions. Thus, an erroneously released prisoner's subsequent conduct is relevant to whether equitable relief will be granted." *id.*

Still another reason to not toll his supervision by DOC is that prohibiting any tolling is "fair" based on an equitable doctrine reasoning. The underlying theme of the cases cited in *Roach* are that an offender is entitled to equitable relief given that he was erroneously released (mistaken trial court decision in the case at bench), the release occurred through no fault of his own (Mahone's attorney argued the legal point) and he had not been given credit for the time he spent on liberty on an erroneous release.

It was stated in *Green v. Christiansen,* 732 F.2d 1397, 1400 (9th cir. 1984), relying on *White v. Pearlman, supra,* that the government had led Green to believe that he had completed his parole and was completely at liberty. Accordingly, "simple fairness" justified crediting his sentence. *id.* The court concluded that an offender will receive "full credit for the time that he spent at liberty through the inadvertence of agents of the government and through no fault of his own." *id." Roach,* at 35-6.

Still another reason in Mr. Mahone's favor- to award him credit for the time he was at liberty- is the point raised in the concurring opinion in *Roach.* There Justice Chambers argued against applying the doctrine of equitable credit where the offender knew of the government's mistake but

did not speak out, but remained silent.[4] However, he noted "Given our complex and ever changing sentencing regimes and the availability of earned release time, work release, paroles, pardons, and commutations, prisoners should be able to rely upon the authorities to calculate their sentences accurately." *Roach* at 40.

The Order amending Mahone's Judgment and Sentence dates the order "...this 18th day of November, 2005, NUNC PRO TUNC to October 24, 1995." CP 82. The order nunc pro tunc corrected the original Judgment and Sentence, arguably from the date of the initial sentence, by adding a two year requirement of community placement ten years later. *id.*[5]

A further reason to not toll may be that there was no statute in effect at the time of Mahone's sentence that authorized DOC and that gave the

---

[4] Justice Chambers wrote "The doctrine should not be applied if the State can establish by clear cogent, and convincing evidence that the prisoner either contributed to the error or knew of it and failed to call it to the attention of the authorities." *id.* at 39. The most that can be said against Mr. Mahone is that his court appointed attorney did not, serve the motion on the Department of Corrections, although they may have been present. on April 8, 2013. CP 1-2; RP 5/16/14 RP 9.

[5] See *United States v. Croft*, 450 F.2d 1094 (6th Cir. 1971) (prisoner is entitled to serve his time promptly if such is the judgment imposed, and he must be deemed to be serving it from the date he is ordered to serve it and is in the custody of the marshal under the commitment, if, without his fault, the marshal neglects to place him in proper custody.)

trial court jurisdiction to toll community placement for any reason. RCW 9.94A.340 of the Sentencing Reform Act of 1981 states: "Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed." RCW 9.94B.050 entitled community placement did not go into effect until 2002, seven years after Mr. Mahone was sentenced on October 24, 1995.[6]

Finally, the trial court acknowledged that Mr. Mahone was released from his term of community placement by mistake. The Court stated:

> 'THE COURT: I agree you did not unlawfully absent yourself or abscond. You weren't on community custody. It was erroneously calculated by me. I made a mistake...."

10-17-14 RP 63. The equitable doctrine of credit for time at liberty applies when a mistake has been made. That is the essence of *Roach.* The question in *Roach* was whether "...Roach receives credit against his sentence for time spent at liberty due to the State's mistake." id. at 37. That is this case.

II. THE TRIAL COURT ERRED WHEN IT DENIED THE DEFENDANT'S MOTION FOR RECONSIDERATION OF ITS ORDER DENYING CREDIT.

The defendant filed a pro se motion for "Reconsideration of Order dated 10-17-2014 denying the defendant's motion to credit his time spent

---

[6] Former RCW 9.94A.030(4) of the 1989 SRA defined "community placement" as "a one year period during which the offender is subject to the conditions of community custody and/or postrelease supervision....."

erroneously at liberty against the remainder of defendant's supervision." CP 103. The trial court denied this written motion. CP 118.

Standard of Review

"Motions for reconsideration are addressed to the sound discretion of the trial court. *State v. Scott,* 92 Wn.2d 209, 595 P.2d 549 (1979); *State v. Holland,* 30 Wn. App. 366, 375, 635 P.2d 142 (1981), *affirmed,* 98 Wn.2d 507, 656 P.2d 1056 (1983). According to *State ex. Rel. Carroll v. Junker,* 79 Wn.2d 12, 26, 482 P.2d 775 (1971) abuse of discretion is: "Discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons."

S*tate v. Flores-Serpas,* 89 Wn.2d 521, 949 P.2d 843 (Div. I 1998) was cited by Mr. Mahone in his motion for reconsideration. CP 105. That court held: the defendant's term of community placement for his prior offense was not tolled upon his arrest and deportation by the Immigration and Naturalization Service. It was not tolled "... because this defendant's absence was cause[d] by deportation, not any fault of his own."[7] CP 105.

Flores-Serpas is legally significant because his sentencing occurred

---

[7] The court stated in *Flores-Serpas*: "Absent any indication that the Legislature intended to toll the expiration of community placement when the defendant is involuntarily absent from supervision, we decline to read this language to extend to every absence, no matter what the reason." *id.* at 524.

in August 1996, eleven months after Mahone was sentenced. At that time RCW 9.94A.170(2) was in effect. That statute stated in pertinent part as follows:

> "A term of supervision, including postrelease supervision ordered in a sentence pursuant to this chapter shall be tolled during any period of time during which the offender had absented himself or herself from supervision without prior approval of the entity under whose supervision the offender has been placed."

The appellate court in *Flores- Serpas* reasoned that based on statutory language, "absented himself or herself" was limited in its application to offenders who voluntarily absented themselves from supervision. In the case at bench, Mr. Mahone did not voluntarily absent himself from supervision, although he was absent from supervision like Flores-Serpas. Instead, Mr. Mahone absented himself because he was released on his own accord. "Just as society is entitled to have the debt paid, the prisoner is entitled to pay his or her debt to society, "re-establish himself and live down his past." *Pearlman,* 42 F.2d at 789." *In re Pers. Restraint of Roach,* at 39 (concurring opinion).

The trial court abused its discretion when it declined to reconsider Mr. Mahone's motion for reconsideration.

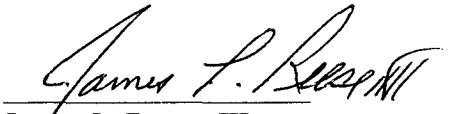
D. Conclusion

This court should rule that Mr. Mahone has completed the two year

term of his community placement that was effective on August 2, 2009, a period of o ver 5 years ago since the date of this appeal.

Dated this 1st day of June 2015.

Respectfully Submitted,



James L. Reese, III
WSBA #7806
Court Appointed Attorney
For Appellant

RCW 9.94A.171
Tolling of term of confinement, supervision.

(1) A term of confinement ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial confinement shall be tolled during any period of time spent in total confinement pursuant to a new conviction.

(2) Any term of community custody shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of the entity under whose supervision the offender has been placed.

(3)(a) For offenders other than sex offenders serving a sentence for a sex offense as defined in RCW 9.94A.030, any period of community custody shall be tolled during any period of time the offender is in confinement for any reason unless the offender is detained pursuant to RCW 9.94A.740 or 9.94A.631 for the period of time prior to the hearing or for confinement pursuant to sanctions imposed for violation of sentence conditions, in which case, the period of community custody shall not toll. However, sanctions that result in the imposition of the remaining sentence or the original sentence will continue to toll the period of community custody. In addition, inpatient treatment ordered by the court in lieu of jail time shall not toll the period of community custody.

(b) For sex offenders serving a sentence for a sex offense as defined in RCW 9.94A.030, any period of community custody shall be tolled during any period of time the sex offender is in confinement for any reason.

(4) For terms of confinement or community custody, the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision.

(5) For the purposes of this section, "tolling" means the period of time in which community custody or confinement time is paused and for which the offender does not receive credit towards the term ordered.

[2011 1st sp.s. c 40 § 1; 2008 c 231 § 28; 2000 c 226 § 5. Prior: 1999 c 196 § 7; 1999 c 143 § 14; 1993 c 31 § 2; 1988 c 153 § 9; 1981 c 137 § 17. Formerly RCW 9.94A.625, 9.94A.170.]

Notes:

Application -- Recalculation of community custody terms -- 2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date -- 2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231: See notes following RCW 9.94A.701.

Severability -- 2008 c 231: See note following RCW 9.94A.500.

Effective date -- 2000 c 226 § 5: "Section 5 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 2000]." [2000 c 226 § 7.]

Finding -- Intent -- Severability -- 2000 c 226: See notes following RCW 9.94A.505.

Construction -- Short title -- 1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability -- 1999 c 196: See note following RCW 9.94A.010.

Effective date -- Application of increased sanctions -- 1988 c 153: See notes following RCW

RCW 9.94B.020
Definitions.

In addition to the definitions set out in RCW 9.94A.030, the following definitions apply for purposes of this chapter:

(1) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(2) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW *16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(3) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

[2008 c 231 § 52.]

Notes:

***Reviser's note:** RCW 16.52.200 was amended by 2009 c 287 § 3, changing subsection (6) to subsection (7). RCW 16.52.200 was subsequently amended by 2011 c 172 § 4, changing subsection (7) to subsection (9).

Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231: See notes following RCW 9.94A.701.

Severability -- 2008 c 231: See note following RCW 9.94A.500.

B

RCW 9.94B.030
Postrelease supervision — Violations — Expenses.

If the offender violates any condition of postrelease supervision, a hearing may be conducted in the same manner as provided in RCW 9.94B.040. Jurisdiction shall be with the court of the county in which the offender was sentenced. However, the court may order a change of venue to the offender's county of residence or where the violation occurred, for the purpose of holding a violation hearing.

After the hearing, the court may order the offender to be confined for up to sixty days per violation in the county jail. Reimbursement to a city or county for the care of offenders who are detained solely for violating a condition of postrelease supervision shall be under RCW 70.48.440. A county shall be reimbursed for indigent defense costs for offenders who are detained solely for violating a condition of postrelease supervision in accordance with regulations to be promulgated by the office of financial management. An offender may be held in jail at state expense pending the hearing, and any time served while awaiting the hearing shall be credited against confinement imposed for a violation. The court shall retain jurisdiction for the purpose of holding the violation hearing and imposing a sanction.

[2009 c 28 § 18; 1988 c 153 § 8. Formerly RCW 9.94A.628, 9.94A.175.]

Notes:

Effective date -- 2009 c 28: See note following RCW 2.24.040.

Effective date -- Application of increased sanctions -- 1988 c 153: See notes following RCW 9.94A.030.

C

RCW 9.94B.040
Noncompliance with condition or requirement of sentence — Procedure — Penalty.

(1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) In cases where conditions from a second or later sentence of community supervision begin prior to the term of the second or later sentence, the court shall treat a violation of such conditions as a violation of the sentence of community supervision currently being served.

(3) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:

(a)(i) Following the violation, if the offender and the department make a stipulated agreement, the department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.

(ii) Within seventy-two hours of signing the stipulated agreement, the department shall submit a report to the court and the prosecuting attorney outlining the violation or violations, and sanctions imposed. Within fifteen days of receipt of the report, if the court is not satisfied with the sanctions, the court may schedule a hearing and may modify the department's sanctions. If this occurs, the offender may withdraw from the stipulated agreement.

(iii) If the offender fails to comply with the sanction administratively imposed by the department, the court may take action regarding the original noncompliance. Offender failure to comply with the sanction administratively imposed by the department may be considered an additional violation.

(b) In the absence of a stipulated agreement, or where the court is not satisfied with the department's sanctions as provided in (a) of this subsection, the court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(c) The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community restitution obligation to total or partial confinement, (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community restitution hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community restitution, or (iv) order one or more of the penalties authorized in (a)(i) of this subsection. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court;

(d) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community restitution obligations; and

(e) If the violation involves a failure to undergo or comply with mental status evaluation and/or outpatient mental health treatment, the community corrections officer shall consult with the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue the least restrictive means of promoting participation in treatment. If the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment procedures of chapter 71.05 RCW shall be considered in preference to incarceration in a local or state correctional facility.

D

(4) The community corrections officer may obtain information from the offender's mental health treatment provider on the offender's status with respect to evaluation, application for services, registration for services, and compliance with the supervision plan, without the offender's consent, as described under *RCW 71.05.630.

(5) An offender under community placement or community supervision who is civilly detained under chapter 71.05 RCW, and subsequently discharged or conditionally released to the community, shall be under the supervision of the department of corrections for the duration of his or her period of community placement or community supervision. During any period of inpatient mental health treatment that falls within the period of community placement or community supervision, the inpatient treatment provider and the supervising community corrections officer shall notify each other about the offender's discharge, release, and legal status, and shall share other relevant information.

(6) Nothing in this section prohibits the filing of escape charges if appropriate.

[2002 c 175 § 8; 1998 c 260 § 4. Prior: 1995 c 167 § 1; 1995 c 142 § 1; 1989 c 252 § 7; prior: 1988 c 155 § 2; 1988 c 153 § 11; 1984 c 209 § 12; 1981 c 137 § 20. Formerly RCW 9.94A.634, 9.94A.200.]

Notes:

***Reviser's note:** RCW 71.05.630 was repealed by 2013 c 200 § 34, effective July 1, 2014.

Effective date -- 2002 c 175: See note following RCW 7.68.170.

Intent -- 1998 c 260: See note following RCW 9.94A.500.

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

Effective date -- Application of increased sanctions -- 1988 c 153: See notes following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.92.150.

Effective date -- 1981 c 137: See RCW 9.94A.905.

RCW 9.94B.050
Community placement.

When a court sentences an offender to a term of total confinement in the custody of the department for any of the offenses specified in this section, the court shall also sentence the offender to a term of community placement as provided in this section. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community placement imposed under this section.

(1) The court shall order a one-year term of community placement for the following:

(a) A sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990; or

(b) An offense committed on or after July 1, 1988, but before July 25, 1999, that is:

(i) Assault in the second degree;

(ii) Assault of a child in the second degree;

(iii) A crime against persons where it is determined in accordance with *RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission; or

(iv) A felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660.

(2) The court shall sentence the offender to a term of community placement of two years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer, for:

(a) An offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, including those sex offenses also included in other offense categories;

(b) A serious violent offense other than a sex offense committed on or after July 1, 1990, but before July 1, 2000; or

(c) A vehicular homicide or vehicular assault committed on or after July 1, 1990, but before July 1, 2000.

(3) The community placement ordered under this section shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release. When the court sentences an offender to the statutory maximum sentence then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible. Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(4) Unless a condition is waived by the court, the terms of any community placement imposed under this section shall include the following conditions:

(a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The offender shall work at department-approved education, employment, or community restitution, or any combination thereof;

(c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The offender shall pay supervision fees as determined by the department; and

(e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

(5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions:

(a) The offender shall remain within, or outside of, a specified geographical boundary;

(b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) The offender shall participate in crime-related treatment or counseling services;

(d) The offender shall not consume alcohol; or

(e) The offender shall comply with any crime-related prohibitions.

(6) An offender convicted of a felony sex offense against a minor victim after June 6, 1996, shall comply with any terms and conditions of community placement imposed by the department relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

(7) Prior to or during community placement, upon recommendation of the department, the sentencing court may remove or modify any conditions of community placement so as not to be more restrictive.

[2003 c 379 § 4; 2002 c 175 § 13; 2000 c 28 § 22. Formerly RCW 9.94A.700.]

Notes:

***Reviser's note:** RCW 9.94A.602 was recodified as RCW 9.94A.825 pursuant to 2009 c 28 § 41.

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

PROOF OF SERVICE

STATE OF WASHINGTON)
COUNTY OF KITSAP)

James L. Reese, III, being first duly sworn on oath, deposes and says:

That he is a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness herein.

That on the 2nd day of June, I deposited in the mails of the United States of America, postage prepaid, for filing, the original and one (1) copy of Appellant's Brief in State of Washington v. James Sylvester Mahone, Court of Appeals Cause No. 46913-8-II, to the Court of Appeals at 950 Broadway, Ste. 300, Tacoma, WA 98402-4454; deposited in the mails of the United States of America, postage prepaid, one (1) copy of the same to Counsel for Respondent, Kathleen Proctor, Pierce County Prosecuting Attorney Office, 930 Tacoma Avenue S., RM. 946, Tacoma WA 98402-2171; and mailed one (1) copy of the same to Appellant at his last known address: James Sylvester Mahone, ID#2014179026, 910 Tacoma Avenue S., Tacoma, WA 98402,

James L. Reese, III

Signed and Attested to before me this 2nd day of June, 2015 by James L. Reese, III.

Julia L. Reese

Notary Public in and for the State of Washington residing at Port Orchard.
My Appointment Expires: 04/04/17